THE
Dan Smoot Report

Vol. 16, No. 6 (Broadcast 755) February 9, 1970 Dallas, Texas

DAN SMOOT

THE YORK CASE

About ten years ago, Mr. and Mrs. Raymond P. York bought a home at 2608 N.W. 44th, Oklahoma City, so that their children could attend the public schools in that neighborhood: James Monroe Elementary School, Taft Junior High School, and Northwest Classen High School.[1]

The Yorks are hard-working people, of modest means. Mrs. York paid her way through high school by working as an elevator operator. Mr. York is employed by an Oklahoma City investment company. Now in their middle thirties, they have three children, the oldest of whom is Ray, age 14.

In the 1968-69 school year, Ray attended Taft, the junior high school near his home.

At that time, Oklahoma City was operating a neighborhood school system. Students were assigned, without regard to race, to schools in their own neighborhood districts. The federal Department of Health, Education, and Welfare complained, because, under the neighborhood system, some schools were predominantly white, others predominantly Negro. To comply with HEW orders, the board of education drew up a "desegregation plan," gerrymandering district lines to require busing of some white students into Negro neighborhoods, busing some Negroes into white areas. This was done specifically and openly to achieve "racial balance" in Oklahoma City public schools; and it was, therefore, clearly in violation of the Civil Rights Act of 1964, which says:

" 'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion or national origin, but 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance . . . .

"Nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another in order to achieve racial balance."

On August 13, 1969, Federal Judge Luther Bohanon ordered implementation of the Oklahoma City

THE DAN SMOOT REPORT is published weekly by The Dan Smoot Report, Inc., Box 9538, Dallas, Texas 75214 (office at 6441 Gaston Ave.). Subscriptions: $18.00 for 2 years; $10.00, 1 year; $6.00, 6 months. Dan Smoot was born in Missouri, reared in Texas. With BA and MA degrees from SMU (1938 and 1940), he joined the Harvard faculty (1941) as a Teaching Fellow, doing graduate work in American civilization. From 1942 to 1951, he was an FBI agent; from 1951 to 1955, a commentator on national radio and television. In 1955, he started his present independent, free-enterprise business: publishing this REPORT and abbreviating it each week for radio and TV broadcasts available for commercial sponsorship by business firms.

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school board's illegal "desegregation plan," beginning in the 1969-70 school year.

Under the plan, some Negroes had to be bused from Harding Junior High School to Taft; and some whites had to be bused from Taft to Harding. Ray York was among the whites transferred from Taft, in his own neighborhood, to Harding, four miles away.

When the 1969-70 school year began, Ray York did not go to Harding as the "desegregation plan" required. He re-enrolled in his neighborhood school, Taft—giving a home address of family friends who live in the newly-gerrymandered Taft district. Discovering this fact, the Taft principal ordered Ray to leave Taft and go to Harding. With the backing of his parents, Ray refused.

On October 11, 1969, the school board ordered Ray dropped from the Taft rolls, and notified his parents that he must go to Harding. Ray — a polite, freckled-face boy and an above-average student — continued attending Taft.

On November 11, 1969, the school board ordered Ray's books taken away from him. The boy was denied a desk or even a chair in his classes. Teachers treated him like a non-person, refusing to answer his questions, not permitting him to participate in class discussions or activities in any way. But Ray continued to attend classes at Taft, sitting on the floor, listening, doing the best he could.

In January, 1970, the board of education filed suit in federal district court, asking for an injunction to prohibit Mr. and Mrs. York from sending Ray to Taft Junior High School.

On January 12, 1970, Judge Luther Bohanon declared that if Ray York were allowed freedom of choice to attend his neighborhood school, "desegregation would be impossible."(1) He held that Mr. and Mrs. York were in violation of his 1969 order to implement the school board's "desegregation plan," and he enjoined them against sending Ray to Taft.

Mrs. York said she would *not* obey the injunction. Mr. York fully supported her. He could not, however, afford to go to jail, because he must make a living for his family. Consequently, he filed a formal notice of compliance. His wife filed notice of non-compliance.

General Clyde Watts — a brilliant lawyer and admirable patriot of wide renown — is representing the Yorks. He pointed out that Judge Bohanon's order of August 13, 1969, did not require the Yorks to take their son out of Taft and send him to Harding. It merely ordered implementation of a school board administrative plan, and a federal court has no valid authority to supervise local school boards. Therefore, if the Yorks were held in contempt for not taking Ray out of Taft, they would, in effect, be punished for violating a court order that never existed. On the other hand, if Judge Bohanon did order Ray York transferred from Taft to Harding to abet the HEW-school-board objective of achieving racial balance, then the Judge himself would be in violation of the Civil Rights Act of 1964.

General Watts asked Judge Bohanon to suspend enforcement of his injunction against the Yorks until the case could be finally decided on appeal. Bohanon replied:

"If they [the York family] want to go to jail, I'll send them to jail. I'm not afraid to do it. The law must be followed. They are not privileged characters."(1)

General Watts replied that Judge Bohanon's personal courage was not at issue.

Mrs. York denied that she has ever considered herself a "privileged character." She said:

"Our complaint is not with the blacks; we welcome them in our school. . . . And there is nothing wrong with Harding school either. But, if we had wanted our children to attend Harding, we would have moved into that district. . . .

"We'll go all the way to the Supreme Court with this if we have the support of the public. . . .

"We do not think of this as breaking a law, and neither does my son. . . .

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"We don't feel this court ruling is a law."[1]

She is quite correct. A court cannot make a law. Only elected legislators can do that. Judge Bohanon and any other federal judge or official who participates in action forcing Ray York to change schools in order to achieve racial balance will be in violation of law; but the boy's parents violate no law by resisting such lawless action.

Apparently nettled by Mrs. York's reaction to his threat of putting her in jail, Judge Bohanon issued another order on January 14, 1970, instructing the U. S. marshal to arrest *the boy* if he tried again to attend Taft Junior High School on January 19 (the beginning day of the second semester), or any time thereafter. If arrested, the boy was to be held in custody until the school day ended, and then released to his parents.

Asked how he felt about all of this, Ray told reporters that he was very proud of his mother and that he would not be afraid to go with U. S. marshals if they arrested him for going to school. He said:

"I'll go if they come after me. It's not exactly the greatest dream I've ever had, but I'd go with them.

"I'd rather be in school. I'll just get farther behind if I can't go."[1]

On January 15, 1970, Mrs. York escorted Ray to his first-hour English class at Taft Junior High School. The teacher ignored the boy, even when he raised his hand to answer questions she had asked. School officials, a crowd of newsmen, and curious students stood in the hall watching Mrs. York as she took Ray to class; but no effort was made to stop her. No federal marshals came to arrest her or the boy.

On January 19, 1970, Mrs. York again took Ray to school at Taft. A U. S. marshal arrested the boy, and held him until the end of the school day.

Mrs. York vowed she would not enroll Ray at Harding. General Watts, her attorney, counseled her not to take him back to Taft; so, the boy is now enrolled in a private school, awaiting outcome of his case.

At a hearing on January 23, 1970, Judge Bohanon found both of Ray's parents guilty of violating the court's order to keep Ray away from Taft Junior High School, and he sentenced them: 30 days in jail and $1000 fine each. Bohanon suspended the sentences until final appeal has been made in the case.

General Watts is representing the York family without fee. Nonetheless, expenses of appealing to the Supreme Court will probably amount to several thousand dollars — "more," as Mrs. York puts it, "than any ten families could finance."[1]

To help this gallant family fight a legal battle of immense importance to all Americans, admirers have created a York Defense Fund (219 Couch Drive, Oklahoma City, Oklahoma 73102). Contributions are urgently needed.

Winning the York case could be an important victory for all Americans who revere the Constitution, respect law, and love liberty.

In the end, however, final relief must come from Congress.

On October 29, 1969, the Supreme Court handed down a decision in *Beatrice Alexander et al., vs. Holmes County Board of Education et al*, saying that "every school district" has "the obligation . . . to terminate dual school systems at once and to operate now and hereafter only unitary schools."

The fact is, of course, that no public school district in the United States now operates a "dual" system, in the sense that races are separated by state or local law. The only school systems violating the Civil Rights Act of 1964 are those which are making student assignments for the purpose of achieving racial balance.

Commenting on the Supreme Court decision ordering instant, forced integration, U. S. Repre-

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sentative John D. Rarick (Louisiana Democrat) said:

"This action of the Supreme Court. . . . is a classic example of the arbitrary and unfettered exercise of naked power. . . . a gross distortion of . . . the Constitution. . . .

"The Constitution . . . places the legislative power in the Congress. . . . Congress has stated plainly that desegregation does not mean integration, and has prohibited the use of Federal moneys for busing to further the 'doctrine of racial proportions.'

"The Secretary of Health, Education, and Welfare has seen fit to ignore this law. He has made his own law, and, by withholding funds, has attempted to do exactly that which he was forbidden to do. Now the Supreme Court has authorized the Fifth Circuit Court of Appeals to use its judicial power to enforce as law the lawless acts of Mr. Finch. . . .

"Those of us in this House are here as Representatives of the American people. . . . Our responsibility under . . . [the] Constitution is plain. The American people have no redress but in this House.

"The power of impeachment rests with us.

"The power of the purse rests with us. The very existence and jurisdiction of every district court and court of appeals in the federal system rests with us. The appellate and supervisory jurisdiction of the Supreme Court is entirely ours to bestow, limit, or abolish. . . .

"When loyal Americans refuse to bow to lawless tyranny, will the President use the Armed Forces, as have his predecessors, to enforce lawless judicial fiat? And if he does, how clean are our hands?

"To condone tyranny which we have the power to end makes us responsible parties with the initial perpetrators."(2)

In short, Congress should abolish the appellate jurisdiction of the Supreme Court, and prohibit lower federal courts from accepting jurisdiction (original or appellate), in all cases involving public schools.

The people must elect a Congress of constitutional conservatives before that will be done. While electing such a Congress, the people should also elect state legislators and governors who will dismantle, as quickly as possible, all compulsory government schools. We could then develop a privately-financed system of free schools that would give our children infinitely better education than they are now getting, at a fraction of present costs.

REMINDER

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FOOTNOTES

(1) All information about the York case came from *Oklahoma Journal*, Jan. 13, 15, 1970; *Daily Oklahoman*, Jan. 13, 15, 1970; *Oklahoma City Times*, Jan. 15, 1970; Associated Press stories, Jan. 18, 19, 1970; Defendants' Pre-Trial Brief, prepared by Clyde Watts; telephone interviews with Watts; Order issued by Judge Luther Bohanon, Jan. 14, 1970.

(2) *Congressional Record*, Oct. 29, 1969

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